

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**PAMELA GALLINA, Appellant**

**and**

**DEPARTMENT OF TRANSPORTATION,  
FEDERAL AVIATION ADMINISTRATION,  
Miami, FL, Employer**

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**Docket No. 04-254  
Issued: March 1, 2004**

*Appearances:*  
*Pamela Gallina, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member

**JURISDICTION**

On November 6, 2003 appellant filed a timely appeal from a September 30, 2003 decision of the Office of Workers' Compensation Programs that denied appellant's traumatic injury claim. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant established that she sustained an injury in the performance of duty on July 9, 2003.

**FACTUAL HISTORY**

On July 9, 2003 appellant, then a 48-year-old aviation safety inspector, filed a traumatic injury claim alleging that, on July 9, 2003, she tripped on a piece of floor tile and twisted her lower back. Appellant stopped work on July 9, 2003.

Evidence of record include a medical report dated July 24, 2003 prepared by Dr. Harry L. Shufflebarger, a Board-certified orthopedist, who reported that appellant had significant spinal reconstructive surgery six months prior and she had a fall at work reinjuring her back a few weeks ago. He advised that appellant could return to work without limitation.

By letter dated August 19, 2003, the Office advised appellant that the information submitted with her claim was insufficient to determine whether she was eligible for compensation benefits. Further, the Office advised appellant of the additional medical and factual evidence needed to support her claim. The Office directed appellant to provide a comprehensive medical report indicating a firm diagnosis of appellant's condition, and a physician's opinion, with medical reasons for such opinion, as to how appellant's work history caused or aggravated the claimed injury.

By decision dated September 30, 2003, the Office denied appellant's claim. The Office found that, while the evidence of record established that the July 9, 2003 incident occurred as alleged, the medical evidence did not provide a diagnosis which could be attributed to the incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury." These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.<sup>1</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>2</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the claimed condition, as well as any attendant disability, and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>3</sup>

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<sup>1</sup> *Gabe Brooks*, 51 ECAB 184 (1999); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>2</sup> *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, *supra* note 1.

<sup>3</sup> *See* 20 C.F.R. § 10.115; *Michael E. Smith*, 50 ECAB 313 (1999).

### **ANALYSIS**

In this case, appellant alleged that she sustained a low back injury as a result of tripping over a floor tile that had been removed from the entrance to an elevator. The Board finds that the evidence of record is sufficient to establish that the July 9, 2003 tripping incident occurred; however, the medical evidence is insufficient to establish that appellant sustained a low back injury causally related to the employment incident. The only medical record submitted in support of the injury was a July 24, 2003 report from Dr. Shufflebarger who reported that appellant had significant spinal reconstructive surgery six months earlier and she had fallen at work reinjuring her back a few weeks ago. However, Dr. Shufflebarger did not provide a firm diagnosis of the injury appellant reportedly sustained as a result of her fall. His statement that appellant reinjured herself as a result of a recent fall at work is not sufficient to meet appellant's burden. Thus, it is not apparent from the record what specific medical condition appellant sustained as a result of the July 9, 2003 tripping incident at work.<sup>4</sup>

### **CONCLUSION**

The Board finds that appellant failed to establish that she sustained an injury in the performance of duty on July 9, 2003.

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<sup>4</sup> The record on appeal includes medical evidence submitted after the Office issued its September 30, 2003 decision. The Board is precluded from considering evidence that was not before the Office at the time it issued its decision. 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 30, 2003 is affirmed.

Issued: March 1, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member